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8 STATE OF CALIFORNIA

9 STATE WATER RESOURCES CONTROL BOARD

10 In the Matter of the Petition of:

11 J.H. BAXTER & COMPANY, ROSEBURG
12 FOREST PRODUCTS, AND
13 INTERNATIONAL PAPER FOR REVIEW
14 OF ACTION BY THE CALIFORNIA
15 REGIONAL WATER QUALITY
16 CONTROL BOARD, NORTH COAST
17 REGION, IN ADOPTING ORDER
18 REQUIRING TECHNICAL
19 INFORMATION PURSUANT TO WATER
20 CODE § 13267(b)

No. _____

PETITION FOR REVIEW
[To Be Held in Abeyance Under
23 C.C.R. § 2050.5]

[Water Code § 13320(a)]

1 This Petition for Review is submitted on behalf of J.H. Baxter & Company,
2 Roseburg Forest Products Co. and International Paper (collectively, the "Weed Remediation
3 Group ("WRG") or "Petitioners") pursuant to California Water Code Section 13320 and
4 California Code of Regulations ("CCR") Title 23, Section 2050, for review of Order Requiring
5 Technical Information Pursuant to Water Code § 13267(b), which was adopted by the California
6 Regional Water Quality Control Board, North Coast Region (the "Regional Board") on July 19,
7 2007 ("Order").

8 **I. NAME, ADDRESS, TELEPHONE NUMBER AND EMAIL**
9 **ADDRESS OF PETITIONERS**

10 Petitioners are J.H. Baxter & Company, Roseburg Forest Products Co. and
11 International Paper. All correspondence and other written communications regarding this matter
12 should be addressed as follows:

- 13 1) Georgia Baxter
14 J.H. Baxter & Co.
15 P.O. Box 5902
16 San Mateo, CA 94402
(650) 349-0201 Ext 202
gbaxter@jhbaxter.com
- 17 2) Ellen Porter
18 Manager of Environmental Affairs
19 Roseburg Forest Products Co.
20 P.O. Box 1088
Roseburg, Oregon 97470
(530) 938-5754
EllenP@rfpco.com
- 21 3) Philip J Slowiak, CSP, CHCM
22 Senior Project Manager
23 Remediation Group
24 Environment Health & Safety
25 International Paper
6400 Poplar Avenue
Memphis, TN 38197
(901) 419-3845
philip.slowiak@ipaper.com

1 With a copy to Petitioners' counsel:

- 2 5) Counsel for Petitioner J.H. Baxter & Co.
3 Seth Goldberg
4 Sara Beth Watson
5 Steptoe & Johnson LLP
6 1330 Connecticut Ave
7 Washington, DC
8 (202) 429-3000
9 sgoldberg@steptoe.com
10 swatson@steptoe.com
11
12 6) Counsel for Petitioner Roseburg Forest Products Co.
13 Steven H. Goldberg
14 Downey Brand LLP
15 555 Capital Mall, 10th Floor
16 Sacramento, CA 95814
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19
20 7) Counsel for Petitioner International Paper
21 Rick R. Rothman, Esq.
22 Bingham McCutchen LLP
23 355 South Grand Avenue, 44th Floor
24 Los Angeles, California 90071
25 (213) 680-6400
26 rothmanr@bingham.com

16 **II. SPECIFIC ACTION OF THE REGIONAL BOARD FOR WHICH**
17 **REVIEW IS SOUGHT**

18 Petitioners request the State Water Resources Control Board ("State Board")
19 review the Order and determine that the Order was improperly issued. A copy of the Order is
20 attached hereto as Exhibit A.

21 **III. DATE OF ACTION FOR WHICH REVIEW IS SOUGHT**

22 The Regional Board entered the Order on July 19, 2007.

23 **IV. STATEMENT OF REASONS THE ACTION WAS**
24 **INAPPROPRIATE OR IMPROPER**

25 Pursuant to Section 13267 of the California Water Code, the Order requires
26 Petitioners to submit a workplan by August 31, 2007, that provides for the investigation of
27 Dwinnell Reservoir for dioxins in resident fish and by October 15, 2007, submit a report
28 describing results of the sampling and analysis of the fish samples. The Petitioners challenge the

1 Order on the grounds that the scope and breadth of the information sought does not, and cannot,
2 satisfy the specific requirements of Water Code section 13267. The Petitioners are involved in
3 remediation at the J.H. Baxter Superfund Site ("Site") located at 422 Mill Street, Weed,
4 California. Most of the remedial action at the Site was completed in 2002. Studies conducted
5 between 1988 and 1993 show that polychlorinated dibenzo-dioxins and furan ("PCDD/F")
6 concentrations in tissue samples collected from fish both upstream and downstream of the Site
7 were completely unremarkable. Moreover, the Site is more than eight miles upstream Dwinnell
8 Reservoir along Beaughton Creek, which is one of several tributaries to the Shasta River.
9 Dwinnell Reservoir has a large watershed (approximately 75,000 acres) and there are numerous
10 potential sources from which any number of contaminants, including PCDD/Fs, could have
11 entered or continue to enter the water courses and be deposited within the Dwinnell Reservoir.
12 These other sources include both point and non-point discharges from both anthropogenic
13 activities and natural events. Given the lack of an identifiable nexus between the Site and
14 conditions at the Dwinnell Reservoir, it is inappropriate for the WRG to undertake such sampling
15 as part of any Site related action. Petitioners believe in issuing the Order, the Regional Board
16 abused its discretion and acted arbitrarily, capriciously and in violation of law.

17 **V. MANNER IN WHICH PETITIONERS HAVE BEEN AGGRIEVED**

18 Petitioners are aggrieved because they are being asked to collect information
19 regarding dioxins in fish tissues in the Dwinnell Reservoir which will not inform or enhance the
20 Regional Board's ability to address remediation at the Site. Section 13267 of the California
21 Water Code does not allow the Regional Board to require technical reports which are not
22 reasonably necessary to protect water quality.

23 Again, Petitioners believe these issues will be resolved through the Petition for
24 Reconsideration which is being filed with the Regional Board concurrently with this Petition.
25 However, if the Petition for Reconsideration is denied, Petitioners reserve their right to
26 supplement this Petition with a submission of amendment(s) as necessary.

1 **VI. REMEDY SOUGHT BY PETITIONERS**

2 Depending on the outcome of the Petition for Reconsideration, all of the issues
3 raised in this Petition may be resolved or rendered moot. Accordingly, Petitioners request the
4 State Board hold this Petition in abeyance pending the outcome of the Petition for
5 Reconsideration, at which time Petitioners will, if necessary, request the State Board to consider
6 this Petition and schedule a hearing. In the event that the Regional Board denies the Petition for
7 Reconsideration, Petitioners will be asking the State Board to rescind or otherwise invalidate the
8 Order.

9 **VII. POINTS AND AUTHORITIES**

10 As noted above, Petitioners believe the Petition for Reconsideration filed with the
11 Regional Board will result in resolving all issues that Petitioners have with the Order, and for
12 that reason presenting a full discussion of points and authorities would appear to be premature.
13 However, Petitioners incorporate by reference all points and authorities identified in their
14 Petition for Reconsideration. In addition, if the Petition for Reconsideration is denied,
15 Petitioners reserve their right to supplement this Petition with a submission of amendment(s) as
16 necessary.

17 **VIII. NOTICE TO REGIONAL BOARD**

18 As indicated in the attached Proof of Service, a copy of this Petition is being
19 simultaneously served by Federal Express upon the Executive Officer of the Regional Board.

20 **IX. STATEMENT THAT THE SUBSTANTIVE ISSUES OR**
21 **OBJECTIONS RAISED IN THIS PETITION HAVE BEEN RAISED**
22 **BEFORE THE REGIONAL BOARD**

23 Petitioners are filing a Petition for Reconsideration of the Order with the Regional
24 Board, concurrently with the filing of this Petition because there are concurrent filing deadlines
25 for both petitions. Petitioners Petition for Reconsideration is based upon the issues mentioned in
26 this Petition. Petitioners request that this Petition be held in abeyance pursuant to Title 23 of the
27 CCR Section 2050.5, and reserve the right to supplement this Petition with a submission of
28 amendment(s) to this Petition as necessary.

1 **X. CONCLUSION**

2 For the reasons stated herein, Petitioners believe they have been aggrieved by the
3 Regional Board's July 19, 2007 Order. However, until such time as the Petition for
4 Reconsideration filed with the Regional Board has been reviewed and Petitioners request the
5 State Board to consider this Petition, Petitioners request the State Board hold this Petition in
6 abeyance.

7 DATED: August 17, 2007

8 Respectfully submitted,

9 RICK R. ROTHMAN
10 BINGHAM McCUTCHEN LLP

11 By: Rick R. Rothman

12 Rick R. Rothman

13 Attorney for Petitioner International Paper

14
15 SETH GOLDBERG
16 STEPTOE & JOHNSON LLP

17 By: Seth Goldberg /s/ KMP
18 Seth Goldberg

19 Attorney for Petitioner J.H. Baxter & Co.

20
21 STEVEN H. GOLDBERG
22 DOWNEY BRAND LLP

23 By: Steven Goldberg /s/ KMP
24 Steven H. Goldberg

25 Attorney for Petitioner Roseburg Forest Products Co.
26
27
28

EXHIBIT A

California Regional Water Quality Control Board
North Coast Region

ORDER REQUIRING TECHNICAL INFORMATION
PURSUANT TO WATER CODE SECTION 13267(b)

FOR

J.H. BAXTER & COMPANY,
ROSEBURG FOREST PRODUCTS
AND
INTERNATIONAL PAPER COMPANY

WEED, CALIFORNIA

Siskiyou County

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board) finds that:

1. J.H. Baxter & Company, Roseburg Forest Products and International Paper Company (hereinafter the Dischargers) own or operate, or previously owned or operated either a wood preserving facility or a wood products facility in the City of Weed, California, located at 422 Mill Street, which is the location of the J.H. Baxter federal Superfund site (hereinafter Site [Attachment A]). The Site has significant soil and groundwater contamination resulting from the use, storage and disposal of wood treatment chemicals. The wood treatment chemicals and associated byproducts that have been discharged at the Site include arsenic, zinc, chromium, copper, pentachlorophenol (PCP), tetrachlorophenol (TCP), polynuclear aromatic hydrocarbons (PAHs) and dioxins.
2. Discharges historically occurred from the Site directly into Beaughton Creek, a tributary to the Shasta River. The Shasta River feeds into Dwinnell Reservoir, where sediments from upstream are deposited. The known discharges from the Site occurred as surface water runoff and from the 001 discharge point that originated from the Roseburg excavation and french drain groundwater collection system. Discharges from the Site have been eliminated except for surface water runoff during extreme wet weather conditions. The surface water runoff water no longer comes into contact with Site contaminants.
3. Regional Water Board files document past investigations that have been conducted on Beaughton Creek. Findings from the investigations identified the presence of Site-related contaminants in Beaughton Creek, including dioxin. The dioxin levels in Beaughton Creek were found to be lower in investigations that occurred after the elimination of discharges from the Site. Beaughton Creek investigation reports, dated September 4, 1992, February 4, 1994 and June 1999, indicate there is no current adverse impact to the creek, and that remedial action and further monitoring of Beaughton Creek is not needed. However, since the historical data identifying discharges of Site-related

contaminants to Beaughton Creek include dioxin, it is reasonable to assume that the dioxin may have flushed through Beaughton Creek and deposited in Dwinnell Reservoir.

4. A past sampling workplan, dated April 23, 1992 for investigating surface water potentially impacted by the Site included soil and water sampling at Dwinnell Reservoir. The report describing implementation of the workplan stated that samples were not collected due to low water levels in the reservoir. No data is available showing that Dwinnell Reservoir has been investigated for dioxins.
5. Dioxins are known to bioaccumulate in the environment, are listed as a persistent organic pollutant and have an affinity to sediment. The deposition of sediment in Dwinnell Reservoir from upstream Shasta River and Beaughton Creek has created the potential for dioxin accumulation in the reservoir. The assessment of the top of food chain species with the greatest exposure in the reservoir provides an adequate investigation of prolonged dioxin impacts to the environment.
6. The following sections of the Porter-Cologne Water Quality Control Act authorize the Regional Water Board Executive Officer to make the following requirements for persons suspected of discharging waste that could affect the quality of waters within this region:
 - Section 13267(a) - *"A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement or authorized by this division, may investigate the quality of any waters of the state within its region."*
 - Section 13267(b) - *"In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or proposes to discharge waste within its region...that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires."*
 - Section 13267(c) - *"In conducting an investigation pursuant to subdivision (a), the regional board may inspect the facilities of any person to ascertain whether the purposes of this division are being met and waste discharge requirements are being complied with. The inspection shall be made with the consent of the owner or possessor of the facilities or, if the consent is withheld, with a warrant duly issued pursuant to the procedure set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting the public health or safety, an inspection may be performed without consent or the issuance of a warrant."*

7. All of the technical reports required by this Order are necessary to ensure that any threat to water quality created by the discharges described above are properly abated and controlled.
8. In light of the preliminary data indicating a potential threat to water quality, the burden, including costs, of the reports required by this Order bear a reasonable relationship to the need for the reports and the benefits to be obtained therefrom.
9. This enforcement action is being taken for the protection of the environment and, therefore, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.
10. Failure to comply with the terms of this Order may result in enforcement under the California Water Code. Any person failing to provide technical reports containing information required by this Order by the required date(s) or falsifying any information in the technical reports is, pursuant to Water Code Section 13268, guilty of a misdemeanor and may be subject to administrative civil liabilities of up to one thousand dollars (\$1,000.00) for each day in which the violation occurs.
11. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with California Water Code Section 13320 and Title 23, California Code of Regulations, Section 2050. The petition must be received by the State Water Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Board, any person affected by this Order may request the Regional Water Board to reconsider this Order. To be timely, any such request must be made within 30 days of the date of this Order. Note that even if reconsideration by the Regional Water Board is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights. If you choose to request reconsideration of this Order or file a petition with the State Water Board, be advised that you must comply with the Order while your request for reconsideration and/or petition is being considered.

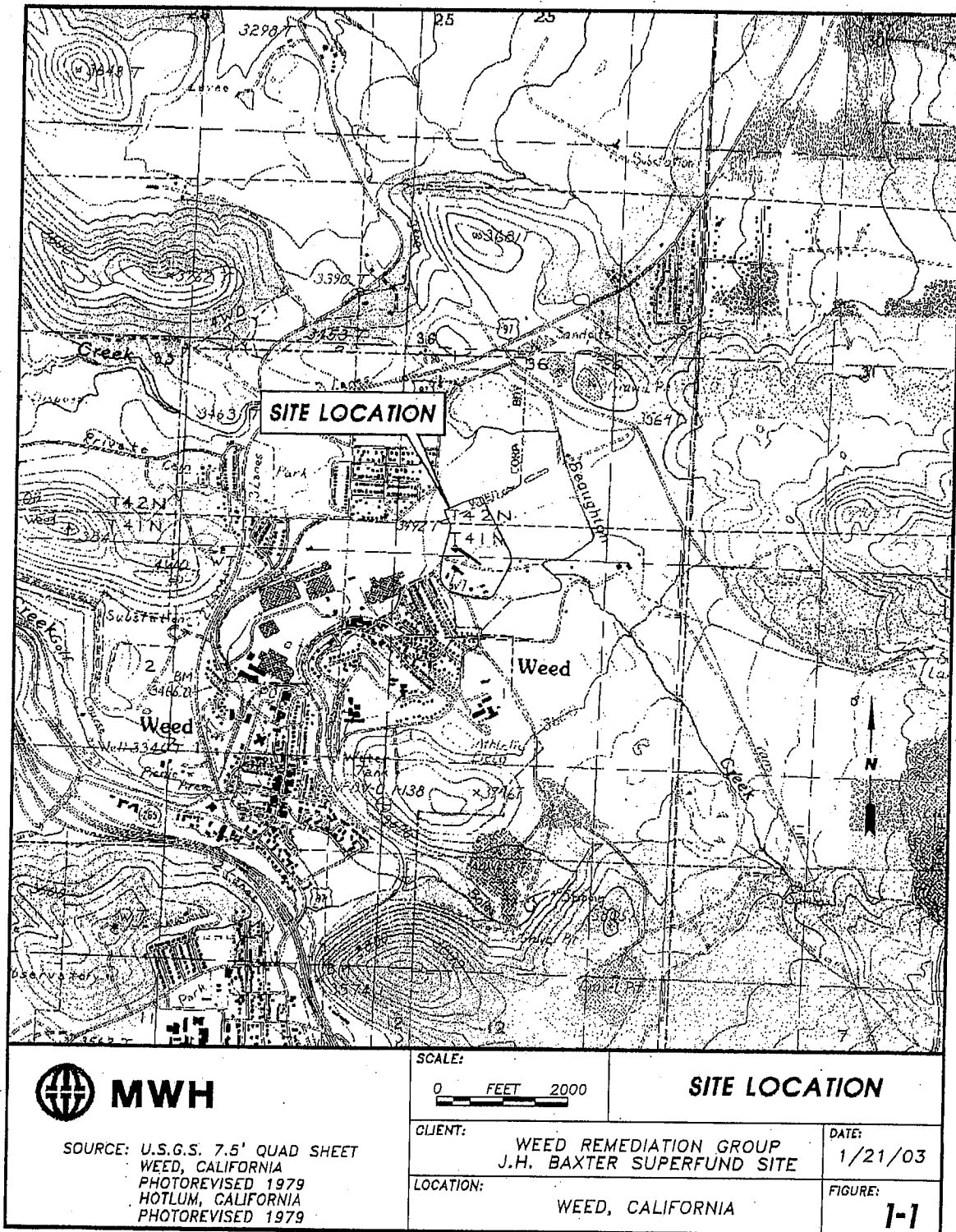
THEREFORE, IT IS HEREBY ORDERED that, pursuant to California Water Code Section 13267(b) the Discharger shall submit to the Regional Water Board Executive Officer:

1. A workplan by August 31, 2007, for the investigation of dioxin in fish from Dwinnell Reservoir.
2. By October 15, 2007, a complete report of the dioxin sampling and analyses proposed in the workplan, under penalty of perjury.

Ordered by _____
Original Signed By
Catherine E. Kuhlman
Executive Officer

July 19, 2007

ATTACHMENT A



1 PROOF OF SERVICE BY ELECTRONIC MAIL

2 I, Amada M. Mosqueda, do hereby certify that on August 17, 2007 a true and correct copy of the
3 enclosed **PETITION FOR REVIEW(Re: J.H. BAXTER & COMPANY, ROSEBURG**
4 **FOREST PRODUCTS CO., AND INTERNATIONAL PAPER FOR REVIEW OF ACTION**
5 **BY THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, NORTH**
6 **COAST REGION, IN ADOPTING ORDER REQUIRING TECHNICAL INFORMATION**
7 **PURSUANT TO WATER CODE § 13267(b))** was forwarded with the practice of this office for
8 collection and processing in the ordinary course of business as indicated below:

9 ☒ (BY E-Mail) by transmitting via e-mail at **jbashaw@waterboards.ca.gov** the
10 document(s) listed above on this date before 5:00 p.m.

11 Jeannette L. Bashaw
12 Legal Secretary
13 Office of Chief Counsel
14 California State Water Resources Control Board
15 1001 I Street, 22nd Floor
16 Sacramento, CA 95814

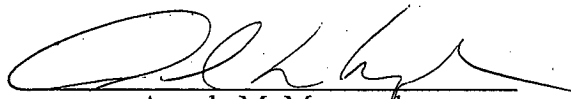
17 ☐ (BY FACSIMILE) by transmitting via facsimile the document(s) listed above on
18 this date before 5:00 p.m.

19 ☐ (BY MAIL) I caused such envelope(s) with postage thereon fully prepaid to be
20 placed in the United States mail at Los Angeles, California.

21 ☐ (BY PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand
22 this date to the offices of the addressee(s).

23 ☐ (BY OVERNIGHT DELIVERY) I caused such envelope(s) to be delivered to an
24 overnight delivery carrier with delivery fees provided for, addressed to the
25 person(s) on whom it is to be served.

26 I declare under penalty of perjury under the laws of the State of California that the
27 foregoing is true and correct and that this declaration was executed on August 17, 2007.

28 
Amada M. Mosqueda

1 PROOF OF SERVICE

2 I am over 18 years of age, not a party to this action and employed in Los Angeles,
3 California at 355 South Grand Avenue, Suite 4400, Los Angeles, California 90071-1560. I am
4 readily familiar with the practice of this office for collection and processing of correspondence
5 for next business day delivery by Federal Express, and correspondence is deposited with Federal
6 Express that same day in the ordinary course of business.

7 Today I served the attached:

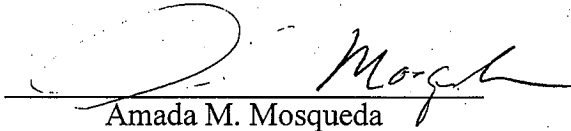
8 **PETITION FOR REVIEW**
9 **(Re: J.H. BAXTER & COMPANY, ROSEBURG FOREST**
10 **PRODUCTS CO., AND INTERNATIONAL PAPER FOR**
11 **REVIEW OF ACTION BY THE CALIFORNIA REGIONAL**
12 **WATER QUALITY CONTROL BOARD, NORTH COAST**
13 **REGION, IN ADOPTING ORDER REQUIRING TECHNICAL**
14 **INFORMATION PURSUANT TO WATER CODE § 13267(b))**

15 by causing a true and correct copy of the above to be delivered by Federal Express from Los
16 Angeles, California in sealed envelope(s) with all fees prepaid, addressed as follows:

17 Jeannette L. Bashaw
18 Legal Secretary
19 Office of Chief Counsel
20 California State Water Resources Control Board
21 1001 I Street, 22nd Floor
22 Sacramento, CA 95814

Catherine E. Kuhlman
Executive Officer
California Regional Water Quality Control
Board, North Coast Region
5550 Skylane Blvd., Suite A
Santa Rosa, CA 95403

23 I declare under penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct and that this declaration was executed on August 17, 2007.

25
26
27
28

Amada M. Mosqueda